IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

APPEAL FROM ORDER NO.853 OF 2005

Babubhai Mortak. ...Appellant.
Vs.
Municipal Corporation for Greater Mumbai &Ors. ...Respondents.
....
Mr. Shishir Joshi for the Appellant.
Mrs.Geeta Joglekar for Respondent No.1.
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CORAM : DR. D.Y. CHANDRACHUD, J.

November 14, 2005.

P.C.:

The Municipal Corporation issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888, calling upon the Appellant to show cause as to why the structure in question, which is alleged to be unauthorised and which is situated in the compulsory open space of a building known as Marine Chambers, situated at Vithaldas Thackersey Marg, Mumbai-400 020, be not removed. It has been alleged in the notice that the structure is also obstructing the free movement of residents and vehicles. The Appellant submitted reply on 27th November 2004. The Assistant Commissioner, K-Ward, by his order dated 7th January 2005, came to the conclusion that none of the documents which were relied upon by the Appellant showed that the structure

existed as of 1st April 1962, which is the datum line for tolerating unauthorised structures. The structure in question is found to be unauthorised and to encroach upon the compulsory open space of the building known as Marine Chambers.

2. In the the Notice of Motion that was moved before the City Civil Court in the suit filed by the Appellant, the Learned Trial Judge has noted that none of the documents that were relied upon by the Appellant showed the existence of the structure prior to the datum line. Neither the Appellant, nor the owner who had instituted an independent suit, produced any documentary evidence showing the authorisation of the structure. The Learned Trial Judge noted that the indenture of 29th June 1970 that is sought to be relied upon, does not reflect the existence of the structure. Moreover, a Xerox copy of a plan was produced, but this was not the City Survey Plan.

3. Having heard Counsel appearing on behalf of the Appellant, I do not find any reason to interfere. The Appellant was given an adequate opportunity to explain how the structure in question was authorised. The reply of the Appellant to the notice does not reveal or disclose documentary material that would establish the existence of the structure as on 1st April 1962. The

structure encroaches upon the compulsory open space. In these circumstances, the order of the Assistant Municipal Commissioner suffers from no error. The Learned Trial Judge has not committed any error in declining to grant interim relief. No material is produced even before this Court to establish that the structure is authorised or that the findings of the Learned Trial Judge suffer from any error. Counsel appearing on behalf of the Appellant sought to rely upon a photocopy of a City Survey extract produced in some other independent proceeding filed by some other occupant to whom a notice had been issued. I fail to see how a photocopy of a plan which has been produced in some other proceedings filed by a third party can be relied upon by the Appellant here. That apart, even on merits the aforesaid plan does not aid the case of the Appellant in establishing the existence of the disputed structure prior to 1st April 1962 or the authorisation of the structure. The structure is not authorised.. In the circumstances, the appeal lacks any merit and is dismissed.

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